



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

September 3, 2008

Mr. Yogesh Patel
West Virginia Department of Environmental Protection
Division of Water and Wastewater Management
Permitting Section
601 57th Street, SE
Charleston, WV 25304

Re: Draft Municipal Separate Storm Sewer (MS4) General Permit WV0116025
Stormwater Discharges from Small MS4s

Dear Mr. Patel:

Thank you for submitting the above-referenced draft permit renewal, which was received by EPA on July 28, 2008. This letter serves to convey the U.S. Environmental Protection Agency (EPA) comments concerning the regulatory review of and recommendations for the draft permit. Comments are submitted pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between the Division of Water Resources of the Department of Natural Resources of the State of West Virginia and the Regional Administrator, Region III, U. S. Environmental Protection Agency (EPA or the Agency) regarding the Administration and Enforcement of the National Pollutant Discharge Elimination System (NPDES) approved on May 10, 1982. Under the MOA, EPA has ninety (90) days from receipt to review general permits. We would like to discuss our comments with you and resolve any issues before October 26, 2008, to facilitate prompt issuance of this permit.

First, we would like to thank West Virginia for its leadership and for working with EPA to address important issues in the stormwater arena and significantly improve this permit over the previous version. Based on the Agency's review to date, we have noted proposed permit conditions that require further clarification and refinement in order to ensure compliance with federal storm water Phase II regulations contained at 40 C.F.R. § 122. Areas of regulatory concern include, but are not limited to:

(1) Requirements under the current permit (40 CFR 122.44(l))

Several draft permit requirements state that the permittee shall develop maps, illicit discharge detection programs, or control mechanisms, etc. within a specific time frame yet these are program elements that should have been completed under the current Phase II MS4 permit. To avoid anti-backsliding, standards and conditions must be at least as stringent as the previous permit.

(2) Water Quality Standards

The Fact Sheet and Special Conditions section of the permit should be revised to clearly state that the applicable requirements are both “maximum extent practicable” (MEP) and to not cause or contribute to a violation of water quality standards. The permit incorporates this provision clearly in Part III B on page 3, but not in the Fact Sheet or in the Special conditions section of the permit on page 20.

Furthermore, EPA recommends the following permit conditions be considered:

(1) TMDL Language

The permit includes TMDL provisions, but should also include a specific requirement for the permittee to update Best Management Practices (BMPs) as needed based on performance monitoring to ensure wasteload allocations are being met.

(2) Measurable Goals

The draft permit requires the permittees develop measurable goals and submit these to the State in their SWMP. EPA recommends that West Virginia provide more direction for these measurable goals and at the very least, reference EPA's Measurable Goals Guidance. <http://cfpub.epa.gov/npdes/stormwater/measurablegoals/part3.cfm>

(3) Monitoring

The draft permit recommends a minimum of one outfall be monitored for a series of parameters commonly found in municipal discharges. EPA recommends that the permit be revised to require at least 6 outfalls or a percentage of the total outfalls such that the results can be interpreted as sampling which is representative of the municipality. It is recommended that the permittees following regulatory requirements for monitoring found in CFR 122.26 and 122.34, as well as 122.44 and 122.48. EPA also recommends that the draft permit incorporate reference to EPA's "Municipal Stormwater Program Evaluation Guidance" EPA 833-R-07-003 and the Region III fact sheet titled "Evaluating Effectiveness of Stormwater Management Programs" posted on EPA's web site at <http://www.epa.gov/npdes/stormwater/municipal>.

(4) Department of Transportation

This permit provides coverage for the West Virginia Department of Transportation along with Phase II municipalities. Several states have issued individual permits to their transportation agencies which are more focused on expectations for a statewide agency rather than for individual communities. We suggest that West Virginia consider that option.

An electronic version of the draft permit is attached with our marked changes as well. These changes incorporate additional permit conditions that may also need refinement and/or clarification.

EPA looks forward to coordinating with WVDEP to work through the items listed above and any others that may arise during the permit review process. If you have any further questions, please contact me at (215) 814-5717 or Ms. Liz Ottinger by calling (215) 814-5783.

Sincerely,

Evelyn S. MacKnight, Chief
NPDES Permits Branch
Water Protection Division

cc: Sherry Wilkins, WVDEP
William Timmermyer, WVDEP

